

Exhibit C



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October 5, 2018

VIA ELECTRONIC FILING

M. Lynn Jarvis
Chief Clerk
North Carolinas Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's
Joint Affiliate Agreement Filing and Notice of Intent to File
Agreement at FERC
Docket Nos. E-2, Sub 1129 and E-7, Sub 1127**

Dear Ms. Jarvis:

Enclosed please find Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Joint Filing for Acceptance of Amended Affiliate Agreement under N.C. Gen. Stat. § 62-153 and Joint Filing of 15-Day Notice of Their Intent to File the As-Available Capacity Sales Agreement at the Federal Energy Regulatory Commission.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Kendrick C. Fentress

Enclosure

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1129**DOCKET NO. E-7, SUB 1127**

In the Matter of	)	DUKE ENERGY CAROLINAS, LLC
	)	AND DUKE ENERGY
Filing for Acceptance under N. C. Gen.	)	PROGRESS, LLC JOINT FILING
Stat. § 62-153 and Joint Advance Notice of	)	FOR ACCEPTANCE OF AMENDED
Duke Energy Progress, LLC and Duke	)	AFFILIATE AGREEMENT UNDER
Energy Carolinas, LLC, Regarding As-	)	N.C. GEN. STAT. § 62-153 AND
Available Capacity Sales Agreement	)	JOINT FILING OF 15-DAY NOTICE
	)	OF THEIR INTENT TO FILE THE
	)	AS-AVAILABLE CAPACITY SALES
	)	AGREEMENT AT THE FEDERAL
	)	ENERGY REGULATORY
	)	COMMISSION
)	

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, the “Companies”) and, pursuant to N.C. Gen. Stat. (“G.S.”) § 62-153 and Regulatory Condition No. 3.1(b), as approved by the North Carolina Utilities Commission (“Commission”) in its August 24, 2018 *Order Granting Motion to Amend Regulatory Conditions*, issued in Docket Nos. E-2, Sub 1100A, E-7, Sub 1095A, and G-9, Sub 682A, file the attached amended affiliate agreement for acceptance under G.S. § 62-153 and Regulatory Condition No. 3.1(a) and, pursuant to Regulatory Condition 3.1(b), provide a 15-day advance notice of their intent to file an affiliate contract for acceptance by the Federal Energy Regulatory Commission (“FERC”) under Section 205 of the Federal Power Act. In support, the Companies show the following:

PROCEDURAL HISTORY

1. The affiliate contract, attached hereto as Exhibit A, is an amended, updated version of the As-Available Capacity Sales Agreement, which the Commission accepted for filing under G.S. § 62-153(a) in its March 17, 2017, *Order Accepting Second*

Revised Agreement for Filing and Ending Advance Notice Period, in Docket Nos. E-2, Sub 1129 and E-7, Sub 1127 (“Order”).

2. DEC and DEP initially filed the As-Available Capacity Sales Agreement (“Agreement”) at the Commission on December 2, 2016 (“Dec. 2. Filing”) in the above-captioned dockets. In that Dec. 2 Filing, DEC and DEP: (i) provided 30 days’ advance notice of their intent to file the Agreement at the FERC and (ii) requested that the Commission accept the Agreement for informational purposes under G.S. § 62-153. The Companies explained that the Agreement allowed DEC and DEP to sell their temporarily available excess capacity to each other in single transactions for a period of not less than four consecutive hours and not more than seven consecutive days. In addition, the Agreement provided that the price of capacity sold under it will be based on the price of capacity established in capacity auctions conducted by PJM Interconnection, LLC (“PJM”). The Companies noted that this was an appropriate pricing mechanism because PJM’s auctions are transparent, PJM’s prices are not subject to control by Duke, PJM is adjacent to the service areas of DEP and DEC, and the Companies regularly make sales into and purchases out of PJM. The Companies further stated that the Agreement benefitted DEC’s and DEP’s customers because it would enable DEC and DEP to minimize their purchases of short-term, temporary capacity on the open market.

3. On December 13, 2016, the Public Staff of the North Carolina Utilities Commission (“Public Staff”) filed its response to the advance notice, stating that the Agreement, if accepted by FERC, would not affect the Commission’s jurisdiction and that the Commission should accept it for informational purposes under G.S. § 62-153. On December 16, 2016, the Public Works Commission of the City of Fayetteville

(“PWC”) intervened in the docket and filed an objection to the Companies’ advance notice. PWC also requested that the advance notice period be extended to allow for the Commission’s further review. By order issued December 29, 2016, the Commission extended the advance notice period to provide time for additional review and for the Companies to respond to PWC’s objection. The Companies and PWC ultimately resolved the outstanding issues at the Commission, and the Companies filed a revised Agreement on February 23, 2017. The Companies refiled the Second Revised Agreement on March 8, 2017, reflecting all of the changes that had been made since the Agreement was filed on December 2, 2016 (“Revised Agreement”). The Commission issued its Order which, as noted above, found good cause to accept the Revised Agreement under G.S. § 62-153(a), without prejudice to the right of any party to take issue with any provision of the Revised Agreement in any appropriate proceeding. The Commission also ended the advance notice period. Order at 4.

4. On May 17, 2017, as amended on August 11, 2017, the Companies filed the Revised Agreement at the FERC. The FERC rejected it on the grounds that it contained provisions of the Companies’ North Carolina regulatory conditions that pertained primarily to retail ratemaking. *Order Rejecting As-Available Capacity Agreement*, 161 FERC 61,029 (Oct. 10, 2017). The FERC denied approval without prejudice, allowing DEC and DEP to refile the As-Available Capacity Sales Agreement in the future to address the concerns of FERC.

5. On August 24, 2018, the Commission issued its *Order Granting Motion to Amend Regulatory Conditions*, in Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-

9, Sub 682A, in which it eliminated the regulatory conditions that had caused the FERC to reject the Revised Agreement.

6. The Companies are now filing this amended Revised Agreement (“Amended Agreement”) to reflect the removal of these provisions. The Companies have also made the following amendments to the Revised Agreement that reflect the passage of time since the Commission issued the Order:

- Term: The term has been updated to reflect the passage of time. Under the proposed amendments to the Revised Agreement, the term would end May 31, 2022 unless extended pursuant to the renewal clause discussed below.
- Renewal Clause: The Revised Agreement would have renewed annually if the PJM capacity price for each Delivery Year after the Delivery Year ending May 31, 2020 was equal to or less than a benchmark price of \$133.75/MW-day, which was based on the arithmetic average of the three most recent PJM capacity auctions at that time. That benchmark price was not the price paid or received for capacity sales under the Revised Agreement, but was only used to determine if the agreement would be renewed past the end of the term. Given the passage of time, the proposed amendments to the Revised Agreement use an updated benchmark price of \$123.56/MW-day, which is the arithmetic average of the PJM capacity prices for the Delivery Years during the initial term of the Amended Agreement. Benchmark price is also now defined in the Definitions section, Article 1.

- Price: The pricing provisions use the same formula for determining the price of capacity under the agreement. The only change is to remove Delivery Years which are no longer applicable, given the passage of time.

A blacklined version of the Amended Agreement, illustrating the revisions to the Revised Agreement previously accepted by the Commission, is attached hereto as Exhibit B.

**REQUEST FOR ACCEPTANCE OF AMENDED AGREEMENT
UNDER G.S. § 62-153**

7. The Companies request that the Commission accept the Amended Agreement for filing under G.S. § 62-153(a), without prejudice to the right of any party to take issue with any provision of the Amended Agreement in the appropriate proceeding.

8. Regulatory Condition 3.1(a) provides that:

DEC, DEP and Piedmont shall not engage in any transactions with Affiliates or proposed Affiliates without first filing the proposed contracts and taking such actions and obtaining from the Commission such determinations and authorizations as may be required under North Carolina law. DEC, DEP, or Piedmont, as applicable, shall submit each proposed Affiliate Contract to the Public Staff for informal review at least 15 days before filing it with the Commission. If DEC, DEP, or Piedmont and the Public Staff agree within the 15-day period that the proposed Affiliate Contract or substantive amendment to an existing Affiliate Contract does not require any action by the Commission, DEC, DEP or Piedmont may proceed to execute the agreement subject to later disapproval and voidance by the Commission pursuant to G.S. 62-153(a).

9. The Companies provided the Amended Agreement to the Public Staff for its informal review on September 20, 2018, 15 days prior to filing.

10. The amendments listed above to the Revised Agreement, which the Commission has previously accepted, do not materially change the operation of the Revised Agreement and, significantly, do not lessen the benefits to DEC's and DEP's customers resulting from DEC's and DEP's ability to minimize their purchases of short-term, temporary capacity on the open market.

15-DAY NOTICE

11. Regulatory Condition 3.1(b) provides that

In addition to the requirements for Regulatory Condition No. 3.1(a), for any contract requiring filing with FERC, DEC, DEP, or Piedmont shall file, for informational purposes, a copy of the proposed Affiliate Contract, a contract with a Proposed Affiliate, or an amendment to an existing Affiliate Contract with the Commission at least 15 days prior to filing with FERC.

12. The Companies hereby file this copy of the proposed Amended Agreement with the Commission for informational purposes 15 days before they intend to file it at the FERC.

WHEREFORE, the Companies respectfully:

1. Request that the Commission accept this Amended Agreement for informational purposes under G.S. § 62-153(a) without prejudice to the right of any party to take issue with any provision of the Amended Agreement in the appropriate proceeding; and

2. Provide notice of their intent to file the Amended Agreement at the FERC under Regulatory Condition No. 3.1(b) in 15 days.

Respectfully submitted, this the 5th day of October, 2018.



Kendrick C. Fentress
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**ATTORNEY FOR DUKE ENERGY
CAROLINAS, LLC AND DUKE
ENERGY PROGRESS, LLC**

AS-AVAILABLE CAPACITY SALES AGREEMENT

BETWEEN

DUKE ENERGY CAROLINAS, LLC

AND

DUKE ENERGY PROGRESS, LLC

(Duke Energy Carolinas, LLC Rate Schedule No. 345)

(Duke Energy Progress, LLC Rate Schedule No. 198)

Tariff Submitter: Duke Energy Carolinas, LLC
FERC Tariff Program Name: FERC FPA Electric Tariff
Tariff Title: Tariffs, Rate Schedules and Service Agreements
Tariff Record Proposed Effective Date: [TBD]
Tariff Record Title: Capacity Sales Agreement
Record Content Description: Rate Schedule No. 345
Option Code: A

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AS-AVAILABLE CAPACITY SALES AGREEMENT

THIS AS-AVAILABLE CAPACITY SALES AGREEMENT (“Agreement”) is made and entered into as of _____, 2018, by and between Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively referred to herein as the “Parties” and individually as a “Party”).

WHEREAS, DEC and DEP are subsidiaries of Duke Energy Corporation; and

WHEREAS, DEC AND DEP are owners and operators of separate electric generation, transmission and distribution facilities and are engaged in the business of generating, transmitting, distributing, and selling electric energy to the retail customers in their respective franchised service areas in North Carolina and South Carolina and also at wholesale to their respective municipal and cooperative customers and off-system customers; and

WHEREAS, DEC and DEP jointly dispatch their power supply resources in order to most economically serve the native load customers of both DEC and DEP under the Joint Dispatch Agreement (“JDA”);

WHEREAS, the JDA provides for the sale of energy between the Parties and the sharing of savings resulting from joint dispatch between the Parties but does not provide for one Party to sell Capacity to the other Party; and

WHEREAS, the Parties desire to establish a framework under which they can sell temporarily excess Capacity to each other in order to more economically operate each of their systems while maintaining reliability and to most economically serve the native load customers of both DEC and DEP; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties mutually agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms shall have the meanings set forth below in this Article I. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this Agreement or as commonly used in the electric utility industry.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” or **“BAA”** means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority within which the Balancing Authority maintains the load-resource balance.

“Benchmark Price” means \$123.56 per MW-DAY, which is the five year arithmetic average of capacity prices, as determined under Section 4.4.

“**Capacity**” means the capability to generate electrical energy.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Industry Standards**” means all applicable national and regional electric reliability council principles, guides, criteria, and standards and industry standard practices.

“**JDA**” means the Joint Dispatch Agreement between the Parties effective July 2, 2012, as it may be amended.

“**NCUC**” means the North Carolina Utilities Commission.

“**OATT**” means the Joint Open Access Transmission Tariff of DEP, DEC, and Duke Energy Florida, LLC, as amended from time to time.

“**PJM**” means PJM Interconnection, L.L.C.

“**PSCSC**” means the Public Service Commission of South Carolina.

“**VACAR**” means the Virginia-Carolinas sub region within the North American Electric Reliability Corporation's (NERC) SERC Reliability Corporation (SERC).

“**VACAR Reserve Sharing Group Arrangement**” means the collection of agreements and procedures developed concurrently by the Principals and Operating Representatives of multiple two-party Interchange Agreements as described in the Operating Manual for the VACAR Reserve Sharing Group Arrangement, Revision No. 2, dated January 11, 2011 by and among Dominion, DEC, DEP, South Carolina Electric & Gas Company and South Carolina Public Service Authority, as amended.

ARTICLE II TERM OF AGREEMENT

2.1 Term.

Subject to approval and any conditions imposed by state and federal regulatory authorities, this Agreement shall take effect upon a date designated by mutual agreement of the Parties, which shall occur after acceptance or approval of this Agreement without material modification by the NCUC, the PSCSC, and the FERC. The term of this Agreement shall end May 31, 2022, unless extended as follows. Beginning with the PJM Delivery Year commencing June 1, 2022 and ending May 31, 2023, and for each PJM Delivery Year thereafter, if the price for sales of Capacity hereunder as determined under Section 4.4 would be equal to or less than the Benchmark Price, then the term of this Agreement automatically shall be extended through the end of such PJM Delivery Year ending May 31. If the price for sales of Capacity hereunder as calculated pursuant to Section 4.4 would be greater than the Benchmark Price, then the term of this Agreement automatically will terminate as of May 31 of the preceding PJM Delivery Year. For the avoidance of doubt, if, for example, the results of the PJM auctions announced in calendar year 2019 indicate that the price of Capacity (as calculated pursuant to Section 4.4)

would exceed the Benchmark Price, then the Agreement will terminate on May 31, 2022. Notwithstanding the foregoing, either Party may terminate this Agreement for any reason or no reason at any time upon six months advance written notice to the other Party.

ARTICLE III SCOPE OF THE AGREEMENT

3.1 Purpose.

The purpose of this Agreement is to provide the contractual basis for one Party to sell temporarily excess Capacity to the other Party in order to reduce the cost of serving their respective native load customers in a manner consistent with Industry Standards and applicable laws and regulations.

3.2 Limits on Scope and Effect of the Agreement.

(a) Nothing in this Agreement is intended to or shall it be construed as:

- (i) Providing for or requiring a single integrated electric system;
- (ii) Providing for or requiring a single BAA, control area or transmission system;
- (iii) Providing for or requiring joint planning or joint development of generation or transmission;
- (iv) Providing for or requiring a Party to construct generation or transmission facilities for the benefit of the other Party;
- (v) Selling any rights to specific generation or transmission facilities from one Party to the other (except for the sale of temporarily excess Capacity as specifically set forth herein); or
- (vi) Providing for or requiring any equalization of the Parties' production costs or rates.

(b) To the extent that the Parties desire to engage in any of the activities or take any of the actions described in Section 3.2(a), the Parties will enter into a separate agreement, subject to approval by the applicable state and federal regulatory authorities.

ARTICLE IV CAPACITY SALES

4.1 Quantity.

DEC and DEP may sell temporarily excess Capacity to each other for time periods when the following circumstances exist: (1) one Party (the "Provider") is projected to have more

Capacity than is required to meet applicable reliability standards, (2) the other Party (the “Recipient”) has determined that it would benefit from an acquisition of Capacity, and (3) to the best of Recipient’s knowledge after making reasonable market inquiries under the circumstances, there are not at that time more economical alternatives available for Recipient’s acquisition of Capacity. Recipient will retain for a period of five years after the transaction documentation of its market inquiries. Nothing in this Agreement will require that a Party maintain or construct Capacity to be available for the other Party in any amount at any time.

4.2 Duration.

The duration for which a Party sells its temporarily excess Capacity to the other Party hereunder in any single transaction may be for a time period of not less than four (4) consecutive hours and not more than seven (7) consecutive calendar days.

4.3 Firm Transmission.

For any time period for which the Parties sell excess Capacity hereunder as provided in Section 4.1 of this Agreement, the Recipient shall procure firm transmission service into the BAA of the Recipient for the full quantity of such Capacity for such time period. Any such procurement of firm transmission service will be made under the terms of the OATT. No transmission service will be provided under this Agreement. The Parties expressly acknowledge their obligations to comply with any applicable commitments that the Parties may have to reserve for third parties firm transmission from the BAA of DEC into the BAA of DEP East under the market power mitigation plan accepted by FERC by order issued June 8, 2012 at para. 89, 31-33, in FERC Docket No. EC11-60. Nothing herein is intended to modify such commitments.

4.4 Price.

(a) The capitalized terms used in this Section 4.4 that are not otherwise defined in Article I shall have the meanings given to them in the PJM Reliability Pricing Model set forth in the PJM Open Access Transmission Tariff, Attachment DD.

(b) The price of Capacity sold hereunder shall be the weighted average of the price of (1) Capacity Performance Resource (“CPR”), (2) Base Capacity Resource (“BCR”), and (3) Annual Resource (“AR”), cleared in the Base Residual Auction (“BRA”) and Transitional Incremental Auction (applicable for DY 2017-18) in the RTO Locational Delivery Area (“RTO LDA”) for each Delivery Year (“DY”) during the term of this Agreement, in dollars per megawatt-day (\$/ MW-Day), as determined through the following formula:

$$\text{Capacity price} = ((\text{DY CPR price} * \text{CPR percentage}) + (\text{DY BCR price} * \text{BCR percentage}) + (\text{DY AR BRA price} * \text{AR percentage}))$$

such that CPR Percentage + BCR Percentage + AR Percentage = 100%

where

DY CPR price is the RTO LDA price cleared for CPR in BRA or Transitional Incremental Auction of the applicable DY

DY BCR price is the RTO LDA price cleared for BCR in BRA of the applicable DY

DY AR price is the RTO LDA price cleared for AR in BRA of the applicable DY

CPR Percentage is the percentage of Capacity Resources that are cleared in BRA or Transitional Incremental Auction of the applicable DY that are composed of CPR

BCR Percentage is the percentage of Capacity Resources that are cleared in BRA of the applicable DY that are composed of BCR

AR Percentage is the percentage of Capacity Resources that are cleared in BRA of the applicable DY that are composed of AR

(c) For DY 2015/2016 through 2020/2021 and beyond the Capacity Price shall be:

DY 2017-2018

$$((\$151.5 * 70\%) + (\$BCR * 0\%) + (\$120 * 30\%)) = \$142.05 \text{ per MW-DAY}$$

DY 2018-2019

$$((\$164.77 * 84.27\%) + (\$149.98 * 15.73\%) + (\$AR * 0\%)) = \$162.44 \text{ per MW-DAY}$$

DY 2019-2020

$$((\$100 * 83.86\%) + (\$80 * 16.14\%) + (\$AR * 0\%)) = \$96.77 \text{ per MW-DAY}$$

DY 2020-2021

$$((\$76.53 * 100\%) + (\$0 * 0\%) + (\$0 * 0\%)) = \$76.53 \text{ per MW-DAY}$$

DY 2021-2022

$$((\$140 * 100\%) + (\$0 * 0\%) + (\$0 * 0\%)) = \$140 \text{ per MW-DAY}$$

DY 2022-2023 and beyond

$$((\$CPR * 100\%) + (\$BCR * 0\%) + (\$AR * 0\%)) = \$ \text{ per MW-DAY}$$

In 2017/2018 BRA, 70% of the Capacity Resources procured by PJM were CPR, and 30% were AR. In 2018/2019 BRA, 84.27% of the Capacity Resources procured by PJM were CPR and 15.73% were BCR. In 2019/2020 BRA, 83.86% of the Capacity Resources procured by PJM were CPR and 16.14% were BCR. For 2020/2021 BRA and beyond, 100% of the Capacity Resources procured by PJM will be CPR.

(d) For sales of Capacity which are of a duration less than one day, the price per hour for each MW of Capacity sold shall be the price per MW-DAY as determined under Section 4.4 (a) - (c) divided by twenty-four (24).

4.5 No Energy; No Modification of JDA.

The Parties will not buy and sell energy under this Agreement. Energy transactions between the Parties will occur under the provisions of the JDA. Nothing in this Agreement is intended to modify or alter any of the provisions of the JDA.

ARTICLE V RESERVED

ARTICLE VI COMPLIANCE WITH CONTRACTUAL AND REGULATORY OBLIGATIONS

Nothing in this Agreement is intended to diminish or alter the jurisdiction or authority of the NCUC or the PSCSC over the Parties, including, among other things, the jurisdiction and authority to establish the retail rates on a bundled basis for each of the Parties, to impose regulatory accounting and reporting requirements, to impose service quality standards, to require each of the Parties to engage separately in least cost integrated resource planning, or to issue certificates of public convenience and necessity for new generating resources. In addition, nothing in this Agreement is intended to alter the Parties' contractual or regulatory obligations or to provide for Capacity sales in a fashion that is inconsistent with those obligations, including, without limitation, the following:

- (a) DEC's obligation to plan for and provide least cost electric service to its native load customers, and DEP's obligation to plan for and provide least cost electric service to its native load customers;
- (b) All of DEC's and DEP's respective obligations under wholesale purchase contracts, including contracts for the purchase of energy and Capacity on a non-dispatchable basis;
- (c) All of DEC's and DEP's respective obligations under wholesale sales contracts, including obligations under full and partial requirements sales contracts;
- (d) All of DEC's and DEP's respective obligations under reliability exchange agreements existing prior to the effective date of this Agreement;
- (e) DEC's and DEP's respective transmission rights and obligations, including rights and obligations under any transmission service agreements or transmission tariffs and their respective obligations to provide transmission services and to act as the Balancing Authority for their respective BAAs; and
- (f) DEC's and DEP's respective individual obligations under the VACAR Reserve Sharing Group Arrangement.

ARTICLE VII RESERVED

ARTICLE VIII INDUSTRY STANDARDS

8.1 Adherence to Reliability Criteria.

The Parties agree to conform to Industry Standards applicable reliability criteria and agreements as they affect the Parties' implementation and performance of this Agreement.

ARTICLE IX GENERAL

9.1 No Third Party Beneficiaries.

This Agreement does not create rights of any character whatsoever in favor of any person, corporation, association, entity or power supplier, other than the Parties, and the obligations herein assumed by the Parties are solely for the use and benefit of said Parties. Nothing in this Agreement shall be construed as permitting or vesting, or attempting to permit or vest, in any person, corporation, association, entity or power supplier, other than the Parties, any rights hereunder or in any of the resources or facilities owned or controlled by the Parties or the use thereof.

9.2 Waivers.

Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement, shall not be deemed a waiver of such right.

9.3 Successors and Assigns.

This Agreement shall inure to the benefit of and be binding only upon the Parties and their respective successors and assigns, and shall not be assignable by any Party without the written consent of the other Party except to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure whereby substantially all such properties are acquired by or merged with those of such a successor, subject to all relevant state and federal regulatory approvals. Prior to any assignment occurring, approval of the NCUC and the PSCSC must be obtained.

9.4 Liability and Indemnification.

Subject to any applicable state or federal law which may specifically restrict limitations on liability, each Party shall release, indemnify, and hold harmless the other Party, its directors, officers and employees from and against any and all liability for loss, damage or expense alleged to arise from, or incidental to, injury to persons and/or damage to property in connection with its facilities or the production or transmission of electric energy by or through such facilities, or related to performance or non-performance of this Agreement, including any negligence arising hereunder. In no event shall any Party be liable to another Party for any indirect, special, incidental or consequential damages with respect to any claim arising out of this Agreement.

9.5 Section Headings.

The descriptive headings of the Articles and Sections of this Agreement are used for convenience only and shall not modify or restrict any of the terms and provisions thereof.

9.6 Notice.

Any notice or demand for performance required or permitted under any of the provisions of this Agreement shall be deemed to have been given on the date of such notice, in writing, is deposited in the U.S. mail, postage prepaid, certified or registered mail, addressed to:

Director System Optimization
526 South Church Street
Charlotte, NC 28202

Director Power Trading & Dispatch
526 South Church Street
Charlotte, NC 28202

or in such other form or to such other address as the Parties may stipulate.

**ARTICLE X
REGULATORY APPROVAL**

10.1 Regulatory Authorization.

The effectiveness of this Agreement is subject to and conditioned upon:

(a) Acceptance for filing without material condition or modification by the FERC; and

(b) The Parties obtaining all necessary approvals from state regulatory authorities to enter into the Agreement, in all cases without material condition or modification.

10.2 Changes.

It is contemplated by the Parties that it may be appropriate from time to time to change, amend, modify or supplement this Agreement to reflect changes in operating practices or costs of operations or for other reasons. Any such changes to this Agreement shall be in writing executed by the Parties, subject to all necessary state and federal regulatory authorizations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officers on the day and year first above written.

DUKE ENERGY CAROLINAS, LLC

By: _____
Name: Eric S. Grant
Title: Vice President, Fuels & Systems Optimization

DUKE ENERGY PROGRESS, LLC

By: _____
Name: John A. Verderame
Title: Managing Director, Power Trading & Dispatch

AS-AVAILABLE CAPACITY SALES AGREEMENT

BETWEEN

DUKE ENERGY CAROLINAS, LLC

AND

DUKE ENERGY PROGRESS, LLC

(Duke Energy Carolinas, LLC Rate Schedule No. 345)
(Duke Energy Progress, LLC Rate Schedule No. 198)

Tariff Submitter: Duke Energy Carolinas, LLC
FERC Tariff Program Name: FERC FPA Electric Tariff
Tariff Title: Tariffs, Rate Schedules and Service Agreements
Tariff Record Proposed Effective Date: ~~July 19, 2017~~[TBD]
Tariff Record Title: Capacity Sales Agreement
Record Content Description: Rate Schedule No. 345
Option Code: A

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AS-AVAILABLE CAPACITY SALES AGREEMENT

THIS AS-AVAILABLE CAPACITY SALES AGREEMENT (“Agreement”) is made and entered into as of _____, ~~2017~~2018, by and between Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively referred to herein as the “Parties” and individually as a “Party”).

WHEREAS, DEC and DEP are subsidiaries of Duke Energy Corporation; and

WHEREAS, DEC AND DEP are owners and operators of separate electric generation, transmission and distribution facilities and are engaged in the business of generating, transmitting, distributing, and selling electric energy to the retail customers in their respective franchised service areas in North Carolina and South Carolina and also at wholesale to their respective municipal and cooperative customers and off-system customers; and

WHEREAS, DEC and DEP jointly dispatch their power supply resources in order to most economically serve the native load customers of both DEC and DEP under the Joint Dispatch Agreement (“JDA”);

WHEREAS, the JDA provides for the sale of energy between the Parties and the sharing of savings resulting from joint dispatch between the Parties but does not provide for one Party to sell Capacity to the other Party; and

WHEREAS, the Parties desire to establish a framework under which they can sell temporarily excess Capacity to each other in order to more economically operate each of their systems while maintaining reliability and to most economically serve the native load customers of both DEC and DEP; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Parties mutually agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms shall have the meanings set forth below in this Article I. If a capitalized term is not defined below, it shall have the meaning provided elsewhere in this Agreement or as commonly used in the electric utility industry.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” or “BAA” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority within which the Balancing Authority maintains the load-resource balance.

“Benchmark Price” means \$123.56 per MW-DAY, which is the five year arithmetic average of capacity prices, as determined under Section 4.4.

“**Capacity**” means the capability to generate electrical energy.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Industry Standards**” means all applicable national and regional electric reliability council principles, guides, criteria, and standards and industry standard practices.

“**JDA**” means the Joint Dispatch Agreement between the Parties effective July 2, 2012, as it may be amended.

“**NCUC**” means the North Carolina Utilities Commission.

“**OATT**” means the Joint Open Access Transmission Tariff of DEP, DEC, and Duke Energy Florida, LLC, as amended from time to time.

“**PJM**” means PJM Interconnection, L.L.C.

“**PSCSC**” means the Public Service Commission of South Carolina.

“**VACAR**” means the Virginia-Carolinas sub region within the North American Electric Reliability Corporation's (NERC) SERC Reliability Corporation (SERC).

“**VACAR Reserve Sharing Group Arrangement**” means the collection of agreements and procedures developed concurrently by the Principals and Operating Representatives of multiple two-party Interchange Agreements as described in the Operating Manual for the VACAR Reserve Sharing Group Arrangement, Revision No. 2, dated January 11, 2011 by and among Dominion, DEC, DEP, South Carolina Electric & Gas Company and South Carolina Public Service Authority, as amended.

ARTICLE II TERM OF AGREEMENT

2.1 Term.

Subject to approval and any conditions imposed by state and federal regulatory authorities, this Agreement shall take effect upon a date designated by mutual agreement of the Parties, which shall occur after acceptance or approval of this Agreement without material modification by the NCUC, the PSCSC, and the FERC. The term of this Agreement shall end May 31, ~~2020~~2022, unless extended as follows. Beginning with the PJM Delivery Year commencing June 1, ~~2020~~2022 and ending May 31, ~~2021~~2023, and for each PJM Delivery Year thereafter, if the price for sales of Capacity hereunder as determined under Section 4.4 would be ~~\$133.75 per MW-DAY~~equal to or less ~~for such year~~than the Benchmark Price, then the term of this Agreement automatically shall be extended through the end of such PJM Delivery Year ending May 31. If the price for sales of Capacity hereunder as calculated pursuant to Section 4.4 would be greater than ~~\$133.75 per MW-DAY~~for such yearthe Benchmark Price, then the term of this Agreement automatically will terminate as of May 31 of the preceding PJM Delivery Year. For the avoidance of doubt, if, for example, the results of the PJM ~~auctions announced in~~

~~calendar year 2018~~ auction conducted for the Delivery Year commencing June 1, 2022 and ending May 31, 2023 indicate that the price of Capacity (as calculated pursuant to Section 4.4) would exceed ~~\$133.75 per MW-DAY for the PJM Delivery Year commencing June 1, 2021 and ending May 31, 2022~~ the Benchmark Price, then the Agreement will terminate on May 31, 2024. Notwithstanding the foregoing, either Party may terminate this Agreement for any reason or no reason at any time upon six months advance written notice to the other Party.

ARTICLE III SCOPE OF THE AGREEMENT

3.1 Purpose.

The purpose of this Agreement is to provide the contractual basis for one Party to sell temporarily excess Capacity to the other Party in order to reduce the cost of serving their respective native load customers in a manner consistent with Industry Standards and applicable laws and regulations.

3.2 Limits on Scope and Effect of the Agreement.

(a) Nothing in this Agreement is intended to or shall it be construed as:

- (i) Providing for or requiring a single integrated electric system;
- (ii) Providing for or requiring a single BAA, control area or transmission system;
- (iii) Providing for or requiring joint planning or joint development of generation or transmission;
- (iv) Providing for or requiring a Party to construct generation or transmission facilities for the benefit of the other Party;
- (v) Selling any rights to specific generation or transmission facilities from one Party to the other (except for the sale of temporarily excess Capacity as specifically set forth herein); or
- (vi) Providing for or requiring any equalization of the Parties' production costs or rates.

(b) To the extent that the Parties desire to engage in any of the activities or take any of the actions described in Section 3.2(a), the Parties will enter into a separate agreement, subject to approval by the applicable state and federal regulatory authorities.

ARTICLE IV CAPACITY SALES

4.1 Quantity.

DEC and DEP may sell temporarily excess Capacity to each other for time periods when the following circumstances exist: (1) one Party (the “Provider”) is projected to have more Capacity than is required to meet applicable reliability standards, (2) the other Party (the “Recipient”) has determined that it would benefit from an acquisition of Capacity, and (3) to the best of Recipient’s knowledge after making reasonable market inquiries under the circumstances, there are not at that time more economical alternatives available for Recipient’s acquisition of Capacity. Recipient will retain for a period of five years after the transaction documentation of its market inquiries. Nothing in this Agreement will require that a Party maintain or construct Capacity to be available for the other Party in any amount at any time.

4.2 Duration.

The duration for which a Party sells its temporarily excess Capacity to the other Party hereunder in any single transaction may be for a time period of not less than four (4) consecutive hours and not more than seven (7) consecutive calendar days.

4.3 Firm Transmission.

For any time period for which the Parties sell excess Capacity hereunder as provided in Section 4.1 of this Agreement, the Recipient shall procure firm transmission service into the BAA of the Recipient for the full quantity of such Capacity for such time period. Any such procurement of firm transmission service will be made under the terms of the OATT. No transmission service will be provided under this Agreement. The Parties expressly acknowledge their obligations to comply with any applicable commitments that the Parties may have to reserve for third parties firm transmission from the BAA of DEC into the BAA of DEP East under the market power mitigation plan accepted by FERC by order issued June 8, 2012 at para. 89, 31-33, in FERC Docket No. EC11-60. Nothing herein is intended to modify such commitments.

4.4 Price.

(a) The capitalized terms used in this Section 4.4 that are not otherwise defined in Article I shall have the meanings given to them in the PJM Reliability Pricing Model set forth in the PJM Open Access Transmission Tariff, Attachment DD.

(b) The price of Capacity sold hereunder shall be the weighted average of the price of (1) Capacity Performance Resource (“CPR”), (2) Base Capacity Resource (“BCR”), and (3) Annual Resource (“AR”), cleared in the Base Residual Auction (“BRA”) and Transitional Incremental Auction (applicable for DY ~~2016-17~~ and 2017-18) in the RTO Locational Delivery Area (“RTO LDA”) for each Delivery Year (“DY”) during the term of this Agreement, in dollars per megawatt-day (\$/ MW-Day), as determined through the following formula:

$$\text{Capacity price} = ((\text{DY CPR price} * \text{CPR percentage}) + (\text{DY BCR price} * \text{BCR percentage}) + (\text{DY AR BRA price} * \text{AR percentage}))$$

such that CPR Percentage + BCR Percentage + AR Percentage = 100%

where

DY CPR price is the RTO LDA price cleared for CPR in BRA or Transitional Incremental Auction of the applicable DY

DY BCR price is the RTO LDA price cleared for BCR in BRA of the applicable DY

DY AR price is the RTO LDA price cleared for AR in BRA of the applicable DY

CPR Percentage is the percentage of Capacity Resources that are cleared in BRA or Transitional Incremental Auction of the applicable DY that are composed of CPR

BCR Percentage is the percentage of Capacity Resources that are cleared in BRA of the applicable DY that are composed of BCR

AR Percentage is the percentage of Capacity Resources that are cleared in BRA of the applicable DY that are composed of AR

(c) For DY 2015/2016 through 2020/2021 and beyond the Capacity Price shall be:

DY ~~2015-2016-2017-2018~~

$$\frac{((\$CPR*0\%)+(\$BCR*0\%)+(\$136*100\%))}{\text{per MW-DAY}} = \$136 \text{ per MW-DAY}$$

~~DY 2016-2017~~

$$\frac{((\$134*60\%)+(\$BCR*0\%)+(\$59.37*40\%))}{\text{per MW-DAY}} = \$104.148 \text{ per MW-DAY}$$

DY 2017-2018

$$\frac{((\$151.5*70\%)+(\$BCR*0\%)+(\$120*30\%))}{\text{per MW-DAY}} = \$142.05 \text{ per MW-DAY}$$

DY 2018-2019

$$((\$164.77*84.27\%)+(\$149.98*15.73\%)+(\$AR*0\%)) = \$162.44 \text{ per MW-DAY}$$

DY 2019-2020

$$((\$100*83.86\%)+(\$80*16.14\%)+(\$AR*0\%)) = \$96.77 \text{ per MW-DAY}$$

DY 2020-2021

$$((\$76.53*100\%)+(\$0*0\%)+(\$0*0\%)) = \$76.53 \text{ per MW-DAY}$$

DY 2021-2022

$$((\$140*100\%)+(\$0*0\%)+(\$0*0\%)) = \$140 \text{ per MW-DAY}$$

DY 2022-2023 and beyond

$$((\$CPR*100\%)+(\$BCR*0\%)+(\$AR*0\%)) = \$ \text{ per MW-DAY}$$

~~In 2015/2016 BRA, 100% of the Capacity Resources procured by PJM were AR, excluding extended summer and limited resources. In 2016/2017 BRA, 60% the Capacity Resources procured by PJM were CPR and 40% were AR.~~ In 2017/2018 BRA, 70% of the Capacity Resources procured by PJM were CPR, and 30% were AR. In 2018/2019 BRA, 84.27% of the Capacity Resources procured by PJM were CPR and 15.73% were BCR. In 2019/2020 BRA, 83.86% of the Capacity Resources procured by PJM were CPR and 16.14% were BCR. For 2020/2021 BRA and beyond, 100% of the Capacity Resources procured by PJM will be CPR.

(d) For sales of Capacity which are of a duration less than one day, the price per hour for each MW of Capacity sold shall be the price per MW-DAY as determined under Section 4.4 (a) - (c) divided by twenty-four (24).

4.5 No Energy; No Modification of JDA.

The Parties will not buy and sell energy under this Agreement. Energy transactions between the Parties will occur under the provisions of the JDA. Nothing in this Agreement is intended to modify or alter any of the provisions of the JDA.

**ARTICLE V
RESERVED**

**ARTICLE VI
COMPLIANCE WITH CONTRACTUAL AND REGULATORY OBLIGATIONS**

Nothing in this Agreement is intended to diminish or alter the jurisdiction or authority of the NCUC or the PSCSC over the Parties, including, among other things, the jurisdiction and authority to establish the retail rates on a bundled basis for each of the Parties, to impose regulatory accounting and reporting requirements, to impose service quality standards, to require each of the Parties to engage separately in least cost integrated resource planning, or to issue certificates of public convenience and necessity for new generating resources. In addition, nothing in this Agreement is intended to alter the Parties' contractual or regulatory obligations or to provide for Capacity sales in a fashion that is inconsistent with those obligations, including, without limitation, the following:

(a) DEC's obligation to plan for and provide least cost electric service to its native load customers, and DEP's obligation to plan for and provide least cost electric service to its native load customers;

(b) All of DEC's and DEP's respective obligations under wholesale purchase contracts, including contracts for the purchase of energy and Capacity on a non-dispatchable basis;

(c) All of DEC's and DEP's respective obligations under wholesale sales contracts, including obligations under full and partial requirements sales contracts;

(d) All of DEC's and DEP's respective obligations under reliability exchange agreements existing prior to the effective date of this Agreement;

(e) DEC's and DEP's respective transmission rights and obligations, including rights and obligations under any transmission service agreements or transmission tariffs and their respective obligations to provide transmission services and to act as the Balancing Authority for their respective BAAs; and

(f) DEC's and DEP's respective individual obligations under the VACAR Reserve Sharing Group Arrangement.

ARTICLE VII RESERVED

ARTICLE VIII INDUSTRY STANDARDS

8.1 Adherence to Reliability Criteria.

The Parties agree to conform to Industry Standards applicable reliability criteria and agreements as they affect the Parties' implementation and performance of this Agreement.

ARTICLE IX GENERAL

9.1 No Third Party Beneficiaries.

This Agreement does not create rights of any character whatsoever in favor of any person, corporation, association, entity or power supplier, other than the Parties, and the obligations herein assumed by the Parties are solely for the use and benefit of said Parties. Nothing in this Agreement shall be construed as permitting or vesting, or attempting to permit or vest, in any person, corporation, association, entity or power supplier, other than the Parties, any rights hereunder or in any of the resources or facilities owned or controlled by the Parties or the use thereof.

9.2 Waivers.

Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement, shall not be deemed a waiver of such right.

9.3 Successors and Assigns.

This Agreement shall inure to the benefit of and be binding only upon the Parties and their respective successors and assigns, and shall not be assignable by any Party without the written consent of the other Party except to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure whereby substantially all such properties are acquired by or merged with those of such a successor, subject to all relevant state and federal

regulatory approvals. Prior to any assignment occurring, approval of the NCUC and the PSCSC must be obtained.

9.4 Liability and Indemnification.

Subject to any applicable state or federal law which may specifically restrict limitations on liability, each Party shall release, indemnify, and hold harmless the other Party, its directors, officers and employees from and against any and all liability for loss, damage or expense alleged to arise from, or incidental to, injury to persons and/or damage to property in connection with its facilities or the production or transmission of electric energy by or through such facilities, or related to performance or non-performance of this Agreement, including any negligence arising hereunder. In no event shall any Party be liable to another Party for any indirect, special, incidental or consequential damages with respect to any claim arising out of this Agreement.

9.5 Section Headings.

The descriptive headings of the Articles and Sections of this Agreement are used for convenience only and shall not modify or restrict any of the terms and provisions thereof.

9.6 Notice.

Any notice or demand for performance required or permitted under any of the provisions of this Agreement shall be deemed to have been given on the date of such notice, in writing, is deposited in the U.S. mail, postage prepaid, certified or registered mail, addressed to:

Director System Optimization
526 South Church Street
Charlotte, NC 28202

Director Power Trading & Dispatch
526 South Church Street
Charlotte, NC 28202

or in such other form or to such other address as the Parties may stipulate.

**ARTICLE X
REGULATORY APPROVAL**

10.1 Regulatory Authorization.

The effectiveness of this Agreement is subject to and conditioned upon:

(a) Acceptance for filing without material condition or modification by the FERC; and

(b) The Parties obtaining all necessary approvals from state regulatory authorities to enter into the Agreement, in all cases without material condition or modification.

10.2 Changes.

It is contemplated by the Parties that it may be appropriate from time to time to change, amend, modify or supplement this Agreement to reflect changes in operating practices or costs of

operations or for other reasons. Any such changes to this Agreement shall be in writing executed by the Parties, subject to all necessary state and federal regulatory authorizations.

ARTICLE XI
COMPLIANCE WITH NCUC and PSCSC REGULATORY CONDITIONS

~~11.1 — DEC and DEP Regulatory Conditions.~~

~~In compliance with NCUC and PSCSC regulatory conditions, the Parties agree as follows:~~

~~(a) — To the extent Capacity sales under this Agreement result in sales of control of, or operational responsibility for, DEC's generation assets used for the generation of electric power for DEC's North Carolina retail customers, then:~~

~~(i) — DEC will not commit to or carry out the sale except in accordance with all applicable law, and the rules, regulations, and orders of the NCUC and PSCSC promulgated thereunder; and~~

~~(ii) — DEC will not include in its North Carolina or South Carolina cost of service or rates the value of the sale, whether or not subject to federal law, except as allowed by the NCUC and PSCSC in accordance with North Carolina and South Carolina law.~~

~~(b) — To the extent Capacity sales under this Agreement result in sales of control of, or operational responsibility for, DEP's generation assets used for the generation of electric power for DEP's North Carolina or South Carolina retail customers, then:~~

~~(i) — DEP will not commit to or carry out the sale except in accordance with all applicable law, and the rules, regulations, and orders of the NCUC and PSCSC promulgated thereunder; and~~

~~(ii) — DEP will not include in its North Carolina or South Carolina cost of service or rates the value of the sale, whether or not subject to federal law, except as allowed by the NCUC and PSCSC in accordance with North Carolina and South Carolina law.~~

~~(c) — (i) — The participation by both DEC and DEP in this Agreement is voluntary, neither DEC nor DEP is obligated to participate in this Agreement or to make any purchases or sales pursuant hereto, and the participation of both DEC and DEP in this Agreement is subject to termination, pursuant to Section 2.1 of this Agreement.~~

~~(ii) — DEC or DEP may not make or incur a charge under this Agreement except in accordance with North Carolina and South Carolina law and the rules, regulations and orders of the NCUC and PSCSC promulgated thereunder;~~

~~(iii) — DEC or DEP may not seek to reflect in rates any (A) costs incurred under the agreement exceeding the amount allowed by the NCUC and PSCSC or (B) revenue level earned under the agreement less than the amount imputed by the NCUC and PSCSC; and~~

~~(iv) — Neither DEC nor DEP shall assert in any forum — whether judicial, administrative, federal, state, local or otherwise — either on its own initiative or in support of another entity's assertions, that the NCUC's and PSCSC's authority to assign, allocate, impute, make pro forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (A) preempted by federal law or (B) not within the NCUC's or PSCSC's power, authority or jurisdiction; DEC and DEP will bear the full risk of any preemptive effects of federal law with respect to this Agreement.~~

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their duly authorized officers on the day and year first above written.

DUKE ENERGY CAROLINAS, LLC

By: _____
Name: ~~Swati V. Daji~~Eric S. Grant
Title: ~~Senior~~ Vice President, Fuels & Systems Optimization


DUKE ENERGY PROGRESS, LLC

By: _____
Name: John A. Verderame
Title: Managing Director, Power Trading & Dispatch

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Joint Filing for Acceptance of Amended Affiliate Agreement under N.C. Gen. Stat. § 62-153 and Joint Filing of 15-Day Notice of Their Intent to File the As-Available Capacity Sales Agreement at the Federal Energy Regulatory Commission, in Docket Nos. E-2, Sub 1129 and E-7, Sub 1127, has been served by electronic mail, hand delivery, or by depositing a copy in the United States Mail, 1st Class Postage Prepaid, properly addressed to parties of record.

This the 5th day of October, 2018.


Kendrick E. Fentress
Associate General Counsel
Duke Energy Corporation
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